IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.680 OF 2004

Mukund Global Finance Ltd. ....Petitioner.
Vs.
Yamuna Glass Works Ltd. ....Respondent.

Mr. Dhiren Mehdes i/by DSK Legal for the Petitioner.
Ms.P. Kaushik for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 9/6/2005

P.C.:

1. Heard counsel for the parties. Perused the pleadings.

2. This petition is filed for taking action against the company under Section-433 and 434 of the Companies Act. According to the petitioner, the respondent-company was liable to pay sum of Rs.1,00,00,000/- to the petitioner in terms of the amended consent terms executed before this court duly signed by the representative of the company and the representative of the sister company of the respondent company against which petition No.999 of 1999 was filed. The reliance is placed on Clause Nos. 7,8,10 and 13 of the amended consent terms

dated 28.7.2000. As per the amended consent terms, if the sister company of the respondent company i.e. M/s. Sewa Medicals Ltd. failed to pay an amount of Rs.1,00,00,000/-, the respondent company was to make good that amount as per the undertaking given by the said company incorporated in the said amended consent terms. The petition has been filed on the assertion that out of the said amount of Rs.1,00,00,000/- only an amount of Rs.30,00,000/- has been paid by the respondent company and an amount of Rs.70,00,000/- is still outstanding. In Paragraph-6 of the petition, it is mentioned that the petitioner company has received in all Rs.70,00,000/- i.e. an amount of Rs.40,00,000/- has been received from the sister company M/s. Sewa Medicals Ltd. and the remaining amount of Rs.30,00,000/- has been received from the respondent company.

3. In the reply affidavit filed by the respondent company before this court it is however, averred that total amount of Rs.70,00,000/- has been paid towards the discharge of the obligation under the amended consent terms relating to Rs.1,00,00,000/-. Rs.40,00,000/- have been paid by M/s. Sewa Medicals Ltd. and Rs.30,00,000/- by the respondent company.

Besides, it is averred that sum of Rs.16,25,000/- are lying with the court receiver being 25 per cent bid deposits made by Mr. Kamlesh Patel which has been forfeited. That amount can be utilized for paying the outstanding dues of the petitioner. If that amount is disbursed, then total amount would come to Rs.86,25,000/-, leaving the balance of Rs.13,75,000/- as outstanding dues. In so far as this amount is concerned, the case of the respondent company is that already under the consent terms 26 plots of the respondent company have been taken over by the Court receiver. Those plots are available for sale and sale proceeds can be made over to the petitioner. In other words, the stand of the respondent company is that there is ample provision to discharge financial obligation as against the claim of the petitioner. This submission, in my opinion, is reasonable one. The petitioner has filed its rejoinder affidavit but has not clearly stated that the amount received from Sewa Medicals Ltd., which is the sister company of the respondent company, to the extent of Rs.40,00,000/-, after the execution of the amended consent terms, was not towards the discharge of liability under the said consent terms. In that sense, this court will have to proceed on the assumption that out of

Rs.1,00,00,000/- payable under the consent terms, the petitioner has received sum of Rs.70,00,000/- i.e. Rs.40,00,000/- from Sewa Medicals and Rs.30,00,000/- from the respondent company. The balance amount of Rs.30,00,000/- can be adjusted from the amount lying with the court receiver being sum of Rs.16,75,000/- and from the prospective sale proceeds of the 26 plots in custody of the court receiver, taken over under the consent terms executed between the parties. The petitioner cannot use the present proceedings for the execution of the consent order passed by the court, even if the same is unsatisfied in past. Taking over all view of the matter, I am not inclined to admit this petition and the same is therefore, dismissed.

4. Needless to observe that it will be open to the respondent company to apply before the appropriate forum for directions to the court receiver to permit them to dispose of the 26 plots in the custody of the court receiver by private sale if so advised, so as to satisfy the liability under the consent terms by adjusting the amount from the sale proceeds to be so received. Petition disposed of as above.

(A.M. KHANWILKAR,J.)